BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

DOCKET NO. 2020-229-E

Dominion Energy South Carolina, Incorporated's Establishment of a Solar Choice Metering Tariff Pursuant to S.C. Code Ann. Section 58-40-20	**JOINT RESPONSE OF SOUTH CAROLINA COASTAL CONSERVATION LEAGUE, UPSTATE FOREVER, SOUTHERN ALLIANCE FOR CLEAN ENERGY, VOTE SOLAR, NORTH CAROLINA SUSTAINABLE ENERGY ASSOCIATION, AND SOLAR ENERGY INDUSTRIES ASSOCIATION TO DOMINION ENERGY SOUTH CAROLINA INC.'S PETITION FOR REHEARING AND/OR RECONSIDERATION AND FOR CLARIFICATION**

Pursuant to S.C. Code Ann. Regs. 103-826, the South Carolina Coastal Conservation League, Upstate Forever, Southern Alliance for Clean Energy, Vote Solar, North Carolina Sustainable Energy Association, and Solar Energy Industries Association ("Joint Parties") respond to Dominion Energy South Carolina, Incorporated's ("Dominion", "DESC" or the "Company") June 8, 2021 Petition for Rehearing and/or Reconsideration and for Clarification ("Petition") of Commission Order No. 2021-391 ("Order"). This Order approved solar choice metering tariffs for the customers of Dominion to go into effect on June 1, 2021. For the reasons set forth below, the Joint Parties respectfully request that the Commission deny the Petition for all but one of the seven items listed by Dominion in its Petition.

STANDARD OF REVIEW

Pursuant to S.C. Code Ann. Reg. 103-825(4), "[a] Petition for Rehearing or Reconsideration shall set forth clearly and concisely: (a) The factual and legal issues forming the basis for the petition; (b) The alleged error or errors in the Commission order; [and] (c) The statutory provision or other authority upon which the petition is based." "Conclusory statements that amount to general and non-specific allegations of error do not satisfy the requirements of 10 S.C. Code Ann. Reg. 103-825(4)." Order No. 2020-315 at 13. Accordingly, to prevail on a petition for reconsideration, a petitioner must identify a specific factual or legal error in the Commission's Order. Dominion's Petition fails to meet this high standard. Nevertheless, as set forth below, the Joint Parties would not object to a limited reconsideration and minor revision of Order No. 2021-391 as it relates to item (i) in Dominion's Petition.

ARGUMENT

The Commission is at the height of its delegated discretionary authority in adopting a solar choice metering policy. The Energy Freedom Act provides that "after notice and opportunity for public comment and public hearing, **the Commission shall establish** a 'solar choice metering tariff' for customer-generators to go into effect for applications received after May 31, 2021." S.C. Code Ann. § 58-40-20(F)(1) (emphasis added). The General Assembly delegated to the Commission the authority of establishing a solar choice metering tariff that would comport with the directives of Act 62. Yet, Dominion's petition ignores the Commission's clear statements of law and well-reasoned findings of fact in the Order, opting instead to restate its prior arguments and disregard

the Commission's role as factfinder. This approach cannot support a grant of reconsideration or rehearing, the "purpose" of which "is to allow the Commission to identify and correct specific errors and omissions in its orders." Order No. 2009-218 at 3.

As a result, and as the following sections detail, all but one of the seven items in Dominion's petition should be rejected given that I) the Commission has already rejected the arguments raised by Dominion; II) the Commission has broad discretion to establish a solar choice tariff and evaluate competing factual evidence; and III) the Commission has broad discretion to determine which party holds title to any attributes associated with renewable generation from customer-generator facilities. However, for the reasons set out in Section IV, the Joint Parties do not oppose Dominion's request in item (i) to recover avoided cost credits tied to annual excess net exports.

I. The Commission should Reject Items Numbered (iii), (iv), (vi), and (vii) as Restatements of Arguments Already Raised by Dominion.

For issues numbered (iii), (iv), (vi), and (vii) in its Petition, Dominion restates factual and legal arguments that the Commission explicitly rejected in Order No. 2021-391. For example, in section (iii) Dominion continues to assert that "[m]easuring cost shift based upon the bill savings experienced by customers once they install NEM and comparing that to the benefits they provide is appropriate," even though the Commission has already concluded that "any definition of 'cost shift' that is based exclusively on customer bill savings, or lost revenues to the utility as a result of customer-generators consumption of customer-generated energy behind the meter, or credits for excess generation is incomplete." Order No. 2021-391 at 16. Likewise, DESC maintains that, when NEM customers "experience[] bill savings, DESC does not experience a similar decrease in the cost to serve those NEM customers" even though the Commission has

recognized that "the Company did not undertake a cost of service analysis to evaluate its solar customers for analytical purposes only." Order No. 2021-391 at 64. Dominion Witness Everett acknowledged as much at the hearing. *See* Order No. 2021-391 at 52. In section (iv), relating to the Subscription Fee and Basic Facilities Charge ("BFC"), Dominion restates its claims that these fixed fees are "designed to collect to cost the customer must rightfully pay for the use of DESC's system" despite the Commission's conclusion based on the evidence presented that the Subscription Fee is "unreasonable and not cost-based" and the high BFC proposed for only solar customers was "unjustified." Order No. 2021-391 at 64, 66.

Indeed, most of the arguments put forth in Dominion's Petition are identical to the assertions in its Proposed Order. *Compare* Petition at 26 (characterizing the solar benefits identified in Witness Beach's cost-benefit analysis as "unrecognized" and "ill-defined") *with* Dominion Proposed Order at 32 (arguing that the long-term and societal benefits of solar are "inappropriate" because they were "never quantified by the Commission"); *compare* Petition at 14, 17 ("[The Subscription Fee and BFC] are designed to collect certain costs to serve NEM customers that DESC incurs on its system—including transmission and distribution costs") *with* Dominion Proposed Order at 43-44 (asserting that the Subscription Fee and BFC are tied to the fixed costs that solar systems impose on the grid, including "increased investment in [transmission and distribution] assets").

It is unnecessary to retread ground that the Commission has already covered. For this reason, the Commission has rejected petitions for reconsideration that merely "reiterate[] complaints" and "restate[] belief[s], where "[t]he evidence presented in [the petitioner's] case was insufficient to support the order [] sought" and the Commission

committed "no error of law." *See* Order No. 2017-775 at 5. Here, the Commission's final order gave all due consideration to the proper interpretation of the relevant sections of the statute. The Commission has now interpreted the relevant provisions of Chapter 40 and the legislative intent of the Energy Freedom Act across multiple dockets.[1] Moreover, when interpreting provisions within Title 58 of the South Carolina Code pertaining to public utilities, the Commission is granted wide discretion in how it interprets that law. *See S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n*, 388 S.C. 486, 490, 697 S.E.2d 587, 590 (2010) ("The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons"). The Joint Parties therefore request that the Commission reject the request for rehearing/reconsideration and clarification for these issues numbered (iii), (iv), (vi), and (vii) because the Petition's arguments are simply a restatement of Dominion's positions and the Commission has not committed any error of law.

II. The Commission Has Broad Discretion to Establish a Solar Choice Metering Tariff and Fairly Evaluated Competing Evidence and Proposals of Parties in Exercise of that Discretion.

Dominion argues in item (v) that the Commission's Order misevaluated the evidence presented, but this argument overlooks the Commission's broad authority under the Energy Freedom Act to establish the policy of the state toward customer-generators. As an expert agency, delegated authority by the General Assembly, the Commission is charged with making policy determinations regarding utility rate design and is accorded significant deference in that role. *See Patton v. South Carolina*, 280 S.C. 288, 291 (1984).

[1] *See* Order 2021-391 at 13-18; Order 2021-390 at 29-34; Order dated April 28, 2021, Docket No. 2019-182-E.

Courts have thus refused to "displace the Commission's judgment…even though reasonable minds may differ as to the findings if there is evidence in the record reasonably supporting those findings." *Greyhound Lines, Inc. v. S.C. Pub. Serv. Comm'n*, 274 S.C. 161, 165 (1980). "The weight and credibility assigned to evidence presented is a matter peculiarly within the province of the [Commission]." *S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co.*, 308 S.C. 216, 222 (1992); *Hamm v. S.C. Pub. Serv. Comm'n*, 289 S.C. 22, 26, 344 S.E.2d 600, 602 (1986). Accordingly, Dominion's allegation that the Commission has somehow applied different evidentiary standards ignores the Commission unique discretionary authority to weigh competing evidence.

In the context of net metering, the Commission's authority is even more pronounced. The General Assembly has given the Commission clear and intelligible guideposts and analytical tools to guide its consideration and approval of solar choice tariffs—all of which are more precise than the broad evidentiary standards cited by Dominion. *See, e.g.,* S.C. Code Ann. § 58-40-20(F). But unlike most other provisions of the Public Utility Code, the Commission is delegated the authority to establish a solar choice metering policy that is consistent with law. This framework contemplates a much more active role for the Commission in determining the appropriate solar choice metering policy and is not the traditional reactive role of receiving and evaluating an application based on all evidence in the record. *See* S.C. Code Ann. § 58-40-20(G) ("In establishing a successor solar choice metering tariff, *the commission is directed to…*" (emphasis added)). The record of this case therefore shows that Dominion did not file an application, rather it responded to a directive of the Commission to file its proposal and submitted it as a package of pre-filed direct testimony. While Dominion was accorded the

traditional posture of an applicant in the hearing, the fact is that the statute itself does not require Dominion to file an application or prohibit other parties from making proposals. Rather, the statute delegates the responsibility for developing a successor policy to net metering squarely on the Commission in requiring it to establish solar choice metering tariffs. *See* S.C. Code Ann. § 58-40-20(F)-(H). Unlike a traditional case with a clear applicant, the Commission bears the sole weight of making a decision based on substantial evidence in the record. In this case, the Commission has found that the record supports its broad exercise of authority to establish the solar choice metering policy as delegated by the General Assembly.

III. The Order Is Abundantly Clear that Customer-Generators Own Title to All Associated Renewable Attributes from the Customer-Generator Facilities, Without Need to Differentiate Between Self-Consumption and Annual Net Export Generation.

With respect to Dominion issue (ii), the Commission has broad discretion to determine which party holds title to any attributes associated with renewable generation from customer-generator facilities. It is well accepted that states have the right to establish renewable energy certificate ("REC") markets or policies and that PURPA does not convey rights to environmental attributes associated with qualifying facility ("QF") generation unless the Commission says it does. *See Wheelabrator Lisbon, Inc. v. Connecticut Dep't of Pub. Util. Control*, 531 F.3d 183, 190 (2d Cir. 2008).[2] The Energy

[2] Specifically, in *Wheelabrator Lisbon, Inc. v. Connecticut Dep't of Pub. Util. Control*, 531 F.3d 183, 190 (2d Cir. 2008), the court explained that "RECs are created by the States[,] ... States ... have the power to determine who owns the [RECs] in the initial instance and how they may be sold or traded; it is not an issue controlled by PURPA." *Wheelabrator Lisbon, Inc. v. Connecticut Dep't of Pub. Util. Control*, 531 F.3d 183, 190 (2d Cir. 2008) (quoting *Am. Ref-Fuel Co., Covanta Energy Grp., Montenay Power Corp., & Wheelabrator Techs. Inc.,* 105 FERC ¶ 61004, 61007 (2003)); *see also Californians for Renewable Energy v. California Pub. Utilities Comm'n*, 922 F.3d 929, 940 (9th Cir. 2019); *Coal. for Competitive Elec., Dynegy Inc. v. Zibelman*, 272 F. Supp. 3d 554, 573 (S.D.N.Y. 2017), *aff'd sub nom. Coal. for Competitive Elec., Dynergy Inc. v. Zibelman,* 906 F.3d 41 (2d Cir. 2018); *Morgantown Energy Assocs. v. Pub. Serv. Comm'n of W. Va.,* 2013 WL 5462386, at *24 (S.D. W. Va. Sept. 30, 2013).

Freedom Act is silent on the issue of whether customer-generators retain the rights to the renewable attributes. Dominion's assertion that granting RECs to customer-generators "would violate the applicable tenets of federal and state law" is, thus, simply incorrect and without legal basis.

Further, Dominion's assertion that unbundling RECs from customer-generator generation renders the electricity "brown power" is absurd. The intent of the Energy Freedom Act was to encourage deployment of clean energy resources to stimulate the state's economy, with the bonus impact of displacing polluting, fossil-based generation. Suggesting that unbundling a fictional instrument from the delivery of clean, emission free generation renders that generation dirty or polluting stretches all bounds of reason. The Energy Freedom Act did not create a REC compliance market and the value of RECs in South Carolina is limited to the voluntary market of those willing to buy RECs for reputational purposes (i.e., to claim compliance with Green Power). Generation from a QF is not relevant to the potentially tradeable attributes associated with specific QF resources, as neither PURPA nor state law even contemplate that these attributes are part of the "tenets" of state and federal clean energy preferences. Dominion's argument regarding the ownership of RECs, and the consequences of unbundling RECs from generation, should be wholly rejected.

IV. The Joint Parties Do Not Oppose Dominion's Request to Reconsider and Clarify that Cost Recovery of Annual Excess Net Exports at Avoided Cost Rates Is Legally Permissible.

With regard to Dominion issue (i), the Energy Freedom Act does not guarantee the right to cost recovery of net excess generation (e.g., net exports as determined at the end of the annual period). Instead, Act 62 prohibits electrical utilities "from recovering

lost revenues associated with customer-generators who apply for customer-generator programs" after May 31, 2021. S.C. Code Ann. § 58-40-20(I). On the other hand, under Act 236, the General Assembly prescribed a process by which utilities would treat all remaining excess net metering credits at the end of the annual billing period as a sale of power under PURPA and credit the customer at the utility's avoided cost rate. *See* Act 236, South Carolina 2014 Session Laws (S.B. 1189), effective June 2, 2014 (providing that, under Act 236, previously Section 58-40-20(D)(4), "[a]nnually, the utility shall pay the customer-generator for any accrued net excess generation at the utility's avoided cost for qualified facilities, zeroing-out the customer-generator's account of net excess kWh credits").

This is consistent with how the Federal Energy Regulatory Commission has treated net metering, stating that any excess left at the end of the billing period is treated as a sale of electricity at wholesale that must comply with PURPA or the Federal Power Act. *See, e.g., Sun Edison LLC*, 129 F.E.R.C. ¶ 61,146, 61,620 (2009); *MidAmerican Energy*, 94 F.E.R.C. ¶ 61,340, 62,263 (2001). To the extent that Dominion is only seeking to recover avoided cost value for annual net excess generation (or net exports at the end of the annual netting interval) and is not seeking to recover the avoided cost value for all exports, the Joint Parties do not object to the request for reconsideration on this limited ground.

The Joint Parties would note, however, that Dominion devoted much of the merits hearing to the topic of minimizing any amount that non-participating customers would end up paying as a result of the continued availability of net energy metering. The Joint Parties anticipate the amount of excess net metering credits to be recovered as purchased

power fuel expenses at the end of the annual netting period to be relatively small, and thus, the amount that Dominion would seek to recover in the fuel docket would be modest. At the same time, nothing in the Energy Freedom Act requires Dominion to seek recovery of those credits from ratepayers in the fuel docket. And any kilowatt hour of excess net energy metering represents electricity that was supplied to neighboring customers who paid Dominion for that electricity at the full retail rate.

Nevertheless, the Joint Parties offer the following proposed revised finding of fact and new ordering paragraph to allow for this limited amount of cost recovery as likely still allowed from Act 236:

Proposed Revised Finding of Fact Number 8:

Under the approved tariff, which includes annual netting within TOU (or "on- and off-peak") periods, the Commission finds that it is reasonable for customer-generators to be compensated for any excess net exports at the end of the year at avoided cost rates. Because net export credits will be tied to avoided cost, it is likewise allowable for DESC to recover those avoided cost credits as purchased power fuel expenses through annual fuel proceedings as was also allowed under the Act 236 NEM program.

Proposed Additional Ordering Paragraph 1(h):

The Company may seek to recover annual excess avoided cost credits at avoided cost rates as purchased power fuel expenses through its annual fuel proceedings as was also allowed under the Act 236 NEM program.

CONCLUSION

In sum, the Joint Parties request that the Commission reject Dominion's Petition and reaffirm the well-considered Order previously issued in this docket. Dominion's 30-page Petition seeks to reargue the central issues in this docket, but the Commission has already issued a 100-page order evaluating those same issues in the context of the entire record. In weighing the evidence and interpreting the law, the Commission was acting well within its authority under the Energy Freedom Act. Nevertheless, the Joint Parties do not oppose Dominion's first request relating to avoided cost credits, as detailed above.

Respectfully submitted on this 17th day of June, 2021.

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CERTIFICATE OF SERVICE

I certify that the following persons have been served with one (1) copy of the Joint Response to Dominion Energy South Carolina INC.'s Petition for Rehearing and/or Reconsideration and for Clarification by electronic mail or U.S. First Class Mail at the addresses set forth below:

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This the 17th day of June, 2021.

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